

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 386 (JGK)

5 CORY HARRIS, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 September 16, 2015
5:10 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

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14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

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Assistant United States Attorney

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1 (Case called)

2 THE COURT: Where are we?

3 MS. WAXMAN: Thank you, your Honor. To date, the
4 government has made five productions of discovery. The most
5 recent production was handed out to counsel before your Honor
6 took the bench and consists of evidence extracted from
7 approximately nine cellular telephones that agents seized
8 incident to arrest.

9 One clarification, one sort of point of information
10 for counsel and the defendants, there was a superseding
11 indictment in this case, as your Honor is aware.

12 I just want to put this on the record to make clear
13 because I've gotten a number of questions about this. Jeffrey
14 Elwell was added in a superseding indictment.

15 We didn't add the other defendants to that superseder
16 simply because we wanted to save the Court and counsel the time
17 and resources of bringing everyone back for an arraignment.

18 To the extent that there is going to be a trial in
19 this matter, the government will join all of the remaining
20 defendants in a single indictment.

21 Mr. Elwell is charged as being a member of the same
22 conspiracy that the underlying indictment charges. We just did
23 it for efficiency's sake. The government has begun to discuss
24 pleas with several of the defendants.

25 Our intention is to extend formal plea offers to some

1 of the defendants within the next two to three weeks. I've
2 indicated to most of the counsel who will receive plea offers
3 who those individuals will be.

4 I've also indicated to counsel that the government
5 also intends to file or present to the grand jury a superseding
6 indictment. That superseding indictment, we expect, will
7 charge between two and three of the defendants already charged
8 with a December 2014 homicide.

9 We expect to present that case or that indictment to
10 the grand jury sometime before Christmas. As your Honor is
11 aware, DOJ prefers the government to preclear all the
12 defendants through the capital case unit before we actually
13 present an indictment. So we're working on that process now,
14 and we hope that it can be done by Christmas of this year.

15 THE COURT: Have you notified the two or three
16 defendants who may be subject to that indictment?

17 MS. WAXMAN: Your Honor, we've notified two of the
18 defendants who we are certain will be subject of that
19 indictment. The third one we're not yet sure.

20 This is still a very active investigation. We're
21 still developing the case. There's a chance this person may be
22 charged. To the extent he will be presented with the other
23 two, we will inform his counsel or her counsel as soon as we
24 know.

25 THE COURT: What does counsel want me to do? It seems

1 to me plain that -- how much more discovery is there to be
2 turned over, Ms. Waxman?

3 MS. WAXMAN: Your Honor, I think we're about complete.
4 To the extent that there's any additional information or
5 discovery that comes to our attention or is our possession,
6 we'll produce that immediately. But these five productions are
7 really the bulk of all the discovery.

8 I should also note that the discovery has been made
9 available to each of the defendants in the jails. Usually we
10 produce a single set of discovery for the defendants to share.
11 In this case we've produced a set for each particular
12 defendant. So they should have had the opportunity to review
13 it as well.

14 THE COURT: I would think that I should set the case
15 down for another conference after some of the defendants have
16 had an opportunity to discuss a disposition short of trial.

17 Whether there's a disposition is completely up to the
18 defendants advised by counsel. The Court doesn't get involved
19 in that. I give you the opportunity to discuss that.

20 I'll certainly listen to any other applications by
21 defense counsel, but it would seem to me that another
22 conference in a month or a month and a half would make sense.

23 MS. STERNHEIM: May we have a moment, Judge?

24 THE COURT: Sure.

25 MS. STERNHEIM: Your Honor, I've polled counsel --

1 THE COURT: Are you now lead counsel?

2 MS. STERNHEIM: Well, I just represent Mr. Harris. So
3 I was able to have a seat at the table.

4 It seems, due to scheduling, if we could have a
5 conference the first week in December, that would satisfy the
6 needs of counsel.

7 THE COURT: Okay.

8 MS. STERNHEIM: I would personally request that it not
9 be on a Wednesday.

10 THE COURT: How about December 1 at 4:30?

11 MR. COHEN: I am not available that date.

12 THE COURT: December 15 at 4:30?

13 MS. STERNHEIM: Your Honor, someone will have to stand
14 in for me if that's the case.

15 THE COURT: For that entire week?

16 MS. STERNHEIM: I will not be available the second two
17 weeks in December. Does December 3 or 4 work for the Court?

18 THE COURT: December 3 at 4:30.

19 MS. STERNHEIM: Thank you.

20 THE COURT: Another conference December 3 at 4:30 p.m.
21 I will exclude prospectively the time from today until

22 December 3 from Speedy Trial Act calculations.

23 The continuance is designed to assure effective
24 assistance of counsel. It's designed to allow some parties to
25 discuss a disposition short of trial. It's required because of

1 the complexity of the case.

2 The Court finds that the ends of justice served by
3 ordering the continuance outweigh the best interests of the
4 defendants and of the public in a speedy trial. This order of
5 exclusion is made pursuant to 18 U.S. Code, Section
6 3161(h) (7) (A).

7 Anything else?

8 MS. WAXMAN: Not from the government, your Honor.

9 Thank you.

10 MS. STERNHEIM: Nothing further.

11 THE COURT: Okay. Good afternoon

12 (Adjourned)

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